



**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

KEITH WILLIAMS,
Complainant,

and

PATTEN TRACTOR AND EQUIPMENT,
Respondent.

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**)Charge No: 1999 CF 1317
)EEOC No: 21 B 990523
)ALS No: 11100**

RECOMMENDED ORDER AND DECISION

This matter is before me following a Recommended Liability Determination (RLD) issued on October 15, 2002, incorporated by reference herein. Pursuant to the RLD, Complainant filed a written petition for attorney's fees on November 12, 2002. Respondent filed a written response on December 12, 2002. This matter is ready for decision.

CONTENTIONS OF THE PARTIES

Complainant requests \$31,945.00 in attorney fees for 215.57 hours of services and \$671.96 in costs. Respondent objects to certain fee and cost entries in Complainant's petition.

FINDINGS OF FACT

1. Daniel J. McGrail (McGrail) has been an attorney licensed to practice law for over 17 years.
2. McGrail was involved in civil rights litigation as general counsel for the City of Rockford for 8 years.
3. McGrail's hourly rate in 1999 and 2000 was \$150.00 per hour.
4. McGrail's hourly rate in 2001 was \$175.00 per hour.
5. McGrail's paralegal rate is \$50.00 per hour.
6. For purposes of this fee petition, McGrail billed all time at his previous 1999-2000 rate of \$150.00 per hour.
7. McGrail's hourly rate of \$150.00 is reasonable.
8. McGrail's paralegal rate of \$50.00 per hour is adequately supported and reasonable.
9. McGrail's time expenditures are adequately supported, reasonable and necessary for this litigation.
10. The amount of \$137.48 of Complainant's requested costs of \$671.96 is not adequately supported or reasonable.
11. A reduction in attorney's fees due to Complainant's failure to prevail on one count of this four-count Complaint is not justified.

CONCLUSIONS OF LAW

1. A prevailing Complainant is entitled to reasonable attorney's fees and necessary costs incurred to litigate this matter.
2. The Party seeking attorney's fees is required to provide evidence regarding the number of hours expended and the hourly rates and Complainant has sufficiently done so.

DETERMINATION

Complainant is entitled to an award of \$31,945.00 in attorney's fees for the services of McGrail and \$534.48 for costs.

DISCUSSION

After a finding of liability against the Respondent, the Complainant is entitled to reasonable attorney's fees and costs incurred in litigating the matter. 775 ILCS 5/8A-104(G). The purpose of the fee award is to provide an effective means of access to the judicial process to victims of civil rights violations who might not otherwise have the means to retain counsel. **Clark and Champaign National Bank**, 4 Ill.HRC Rep. 193 (1982). In **Clark**, the Commission set forth guidelines to be considered in awarding attorney's fees. Although the provision of the Act awarding attorney's fees should be accorded liberal construction, the purpose of such awards is not to provide a windfall for prevailing attorneys. **York and Al-Par Liquors**, __ Ill. HRC Rep. __ (1986CF0627, June 29, 1995). The burden of proof for requesting attorney's fees rests with the Complainant.

Appropriate Hourly Rate

When considering a fee petition, it is first necessary to establish a reasonable hourly rate. An appropriate hourly rate is generally dependent upon the actual hourly rate the attorney charges, the experience of the attorney and previous awards of attorney's fees to counsel. **Clark and Champaign National Bank**, *supra*.

Complainant requests an hourly rate of \$150.00. Respondent does not object to this rate and I find this rate reasonable.

Appropriate Number of Hours Expended

Once the hourly rate is decided upon, the next step is to determine whether the hours claimed are justified. Complainant files an affidavit and billing itemization as to the time spent and hours billed for services performed. The billing statement is sufficiently detailed for examination.

Respondent argues that the attorney's time expenditures were excessive and should be reduced. Respondent specifically objects to several entries, which I discuss next.

03/16/99 – Respondent objects that 4.70 hours for an initial office meeting with client and to review relevant documentation is excessive and that this activity should not have taken more than 3.5 hours. I disagree. 4.70 hours is a reasonable amount of time to initially meet with a client to discuss all relevant facts and review all relevant documentation, especially in light of the facts here where the discriminatory conduct consisted of numerous individual events.

06/22/99- Respondent contends that it is unlikely that McGrail had a telephone conversation with the Illinois Department of Human Rights Investigator for 48 minutes and that the time expended was more likely 24 minutes. McGrail indicates that the telephone conference included conversations about witnesses and other related matters. I find a 48-minute conversation with the Department about witnesses to discriminatory acts and other related matters is reasonable and necessary for litigation of this case.

06/25/99 –Respondent argues that a 1.7 hour meeting with Complainant to review witnesses' names should not have taken more than 1.0 hour. I am not convinced that 1.7 hours is excessive for the task of reviewing the names of witnesses with the client in this litigation where Complainant called eight witnesses and Respondent called nine --some more than once -- over four days of testimony.

10/29/99- Respondent contends that 1.50 hours is an excessive time expenditure to review the Department's notice of substantial evidence and conduct a related telephone conference with client. I find that an hour and a half is a reasonable time expenditure for these tasks.

11/22/99- Respondent submits as excessive one hour of time expended reviewing the Complaint from the Department and conducting a related telephone conversation with the client regarding the procedure to be followed. I am unconvinced that spending one hour reviewing the Complaint and having a conversation with the client concerning next steps is an excessive time expenditure.

12/23/99- Respondent objects to 1.20 hours of time expended for reviewing the verified answer and motion for continuance of hearing and related telephone conference with client. I find that spending slightly more than one hour a reasonable time expenditure for these activities.

08/08/200 – Respondent argues that spending 1.4 hours to review discovery to prepare for a telephone conference with opposition attorney is excessive. I find this time expenditure reasonable for this activity.

11/11/2000- Respondent objects to McGrail spending 3.30 hours to meet with the client and review and revise the Joint Pretrial Memorandum. Respondent contends this time expenditure is excessive and should be reduced to reflect 1.5 hours. I find 3.30 hours spent reviewing and revising the prehearing memorandum with the client reasonable.

6/18/01 – Respondent objects to McGrail billing 14.50 hours for the first day of the public hearing, pre-hearing settlement conference and hearing preparation for the next day, stating that, considering counsel spent at least 3 hours traveling to and from Chicago to Rockford, 11.50 hours is a more reasonable time expenditure. I find it reasonable that, on a hearing day, counsel would spend much of the remainder of the day engaged in hearing preparation for the following day's testimony.

6/19/01- Respondent objects to 14.00 hours spent for hearing on the second day and pre- and post-hearing preparation for at least seven witnesses. I do not find a 14-hour time expenditure excessive for these activities.

6/20/01- Respondent argues that spending 15.00 hours for time engaged in the hearing, and pre- and post- hearing preparation for nine witnesses is an excessive time expenditure. Again, I do not find 15.00 hours excessive for these activities.

6/21/2001- McGrail bills 10.00 hours of time for day four of the public hearing, pre-hearing preparation, damage calculations and summation points. Respondent argues that 9 hours is a more reasonable time allocation, especially since counsel spent at least 3 hours traveling back and forth from Rockford. I find 10 hours a reasonable time allocation for these activities.

Limited Success Deduction

Respondent argues that the attorney's fees should be reduced by 15% for Complainant's prosecution of an unsuccessful claim. Of the four- count Complaint, Complainant did not prevail on one count. A complainant's limited degree of success may properly be considered when determining whether a particular fee request is unreasonable. **Hansely v. Eckerhart**, 461 U.S. 424, 102 S.Ct. 1933 (1983), cited with approval by the Commission in **Clark and Western Union Telegraph, Co.**, 10 Ill HRC Rep 316. I find that the one issue upon which Complainant did not prevail was a minor part of the litigation and -- had Complainant prevailed on that issue also -- it would not have significantly altered Complainant's damages award. Further, I am keeping in mind that Complainant's counsel billed all time for services rendered in 2001 at his lower 1999-2000 rate. Therefore, I find that a reduction based on Complainant's lack of success in the one, relatively minor count, of a four-count Complaint is not justified.

Costs

Respondent contends that Complainant's request for \$54.20 for a subpoena fee to Ms. Holland should be disallowed because Complainant did not produce Ms. Holland to the hearing nor make a motion to enforce the subpoena; therefore, her testimony could not have been material to any of Complainant's claims or defenses.

Of course, I have no way of knowing why Ms. Holland did not appear in response to the subpoena; however, Complainant should not be penalized for utilizing the required legal method of compelling the appearance of all witnesses it may call for testimony. Ms. Holland's conduct at the workplace was testified to several times at the hearing and

therefore, her presumed testimony -- had she appeared -- cannot be considered immaterial.

Respondent argues that Complainant's \$130.00 payment to Rockford Detective Service for service of subpoenas should be disallowed because Complainant did not itemize which witnesses were served or the amount the detective service charged for each witness. I agree. Complainant failed to itemize which subpoenas were served by the service and although it might be inferred that all issued subpoenas were served by the service, I should not be put in the position of making this supposition.

Respondent argues that sending subpoenas to the Commission via Federal Express, a private delivery service, is an unnecessarily expensive method of delivery and should be disallowed. I agree that this method is probably the most expensive method of delivery and, without explanation, is unwarranted. Therefore, I am reducing this fee in half-from \$14.96 to \$7.48.

Complainant's costs should be reduced by \$137.48 (\$130.00 + \$7.48).

RECOMMENDATION

Based on the foregoing, it is recommended that the Commission order that:

- A. Respondent pay Complainant \$ 31,945.00 for attorney's fees;
- B. Respondent pay Complainant \$ 534.48 in costs;
- C. Complainant receive all other relief recommended in the RLD .

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative Law Section

ENTERED: December 23, 2002